

REMARKS

Claims 1 through 6 have been finally rejected in view of U.S. Patent No. 6,385,594 issued to Lebda et al. ("Lebda"). Applicants respectfully traverse the rejection of the claims for the following reasons and request allowance of the present application.

Applicants have previously pointed out that Lebda relates to a system in which the individual borrower deals directly with retail lenders, rather than to a system, such as claimed in claim 1, wherein a mortgage broker interacts with wholesale lenders.

Examiner has asserted that Lebda "did not exclude the use of broker or having a broker using this method and system."¹ Respectfully, Examiner's argument is an attempt to turn 35 U.S.C. § 102(e) on its head. Section 102(e) requires that the invention be described in a patent granted on an earlier filed application. Nowhere does 102(e) require, and Applicants are unaware of any judicial authority that has so interpreted 102(e), that a reference can anticipate an invention if the reference merely fails to expressly exclude the applicants' claimed invention, as Examiner has apparently argued.

The relevant question under 102(e) is whether Lebda teaches each element of Applicants' claims. As addressed in footnote 1, Lebda's "borrower" is not a "broker" as claimed. Further, Applicants have performed a word search for the term "broker" in Lebda. It is not there. Applicants have looked for equivalent words or phrases that teach the concept of a "broker." They are not there. Simply put, Lebda fails to teach or suggest "information exchange between a broker and a set of wholesale lenders." Applicants respectfully and earnestly request that Examiner reconsider and withdraw the 102(e) rejection of claims 1 through 6 on this basis.

Examiner has asserted that the recited claim element of exposing to the broker "a set of one or more generic lender profiles" is met by Lebda because Lebda teaches, "the matching of certain lending institutions that meet the criteria set by the user." In other words (and assuming solely for the sake of argument that the user in Lebda is a broker,

¹ Examiner also asserted that Lebda teaches "a process for coordinating loans between a computer user and lending institutions." It is clear from the cited passage of Lebda, however, that the "computer user" is a "prospective borrower" (Col. 3, line 3, line 6, line 7). By clear implication, a "prospective borrower" dealing directly with a lending institution does, in fact, exclude a broker, because the broker's function is to act as a liaison between prospective borrowers and lending institutions.

which in fact it is not), Lebda teaches exposing the "broker" to each and every specific lender that is available and comparing the applicant's information against each and every specific lender. By stark contrast, Applicants' application teaches the novel concept of a "generic" lender profile that eliminates the need to compare the applicant's information against each and every specific lender.

While Applicants' invention is not limited to the illustrated embodiments, reference to Figure 3 of Applicants' application may perhaps assist in putting the claims in context. As shown in Figure 3, there are numerous wholesale lenders 306, each of which has specific lending criteria. Note that every specific wholesale lender's profile is not presented to the broker 304. Rather, only a single generic wholesale lender profile 302 is presented to the broker. By presenting only a generic wholesale lender profile(s) to the broker, the selection process can be greatly simplified.

On the other hand, Lebda relies upon brute force processing to compare the applicant's information against each and every specific lending institution that is available, as taught in Figures 7 and 8 and at column 4, line 42 through column 5, line 34. Examiner has failed to identify and Applicants are unaware of any teaching or suggestion in Lebda of exposing to the broker "one or more generic lender profiles."

Assuming, again solely for the sake of argument, that Figure 7 and related text of Lebda teach exposing a broker to "one or more generic profiles," then Applicants respectfully ask where then does Lebda teach or suggest "exposing to the broker a specific mortgage lender profile" as required by claim 1? In a prior Office Action, Examiner cited to Figure 12 and to column 5, lines 26-33 of Lebda as showing this claim element. Note, however, that the cited Figure and text simply teach forwarding the borrower's application to a limited number of lending institutions. It does not teach exposing a broker to specific lender information/profiles.

Examiner has argued that claim 2, which recites that "the set of unique lender characteristics include a rate sheet" is obvious in light of Lebda. Applicants respectfully traverse this rejection. Examiner's assertion that "including a rate as a part of criteria is old and well known in the art" is moot. Claim 2 clearly recites that the rate sheet is part of the "unique lender characteristics" that are returned to the broker after the criteria have

been applied to the generic lender profile. Examiner has analogized Lebda's filtering criteria to Applicants' claimed element of selection by the broker of a specific wholesale lender. Assuming this to be the case (which Applicants do not agree), then the rate sheet is in fact not part of this selection/filtering process, but occurs subsequent to the selection/filtering process. In other words, Lebda teaches (according to Examiner) to use rate as part of the criteria. By contrast, Applicants' claim 1 recites performing a selection based upon criteria and receiving in response to the selection a rate sheet. This is a fundamentally different process. Although Applicants' invention may be broad enough to encompass a system in which a rate sheet is part of the selection criteria, presently pending claims 1 through 6 are limited to a system in which the rate sheet is a result of the selection process, not a part of the selection process.

Likewise, with respect to claim 3, which recites that the unique lender characteristics include an "eligibility matrix." Note that this is part of the unique lender profile that is returned to the broker after a selection process involving the generic lender profile. By contrast, Lebda argues that using an eligibility matrix as part of the selection process is well known. Nothing in Lebda teaches or suggests, however, including an eligibility matrix as part of a unique lender profile that results from a criteria selection process involving a generic lender profile.

Claim 4 is also patentably distinct over Lebda. This claim requires that the unique lender characteristics include a lock sheet. Examiner has merely asserted that Lebda teaches a system wherein a borrower can accept a loan and the lender can confirm it. Examiner has not identified and Applicants are unaware of any teaching or suggestion in Lebda, however, of including a lock sheet in the unique lender profile. In fact, considering that the filtering process of Lebda occurs in a remote computer 100, it seems unlikely that a lock sheet would be included in Lebda's lending institution tables 175 because this information is never presented to the borrower.

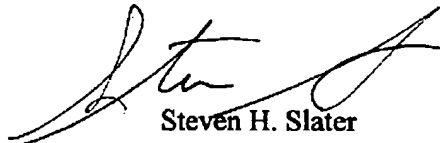
For the same reasons as provided above, nothing in Lebda teaches or suggests displaying to a broker mortgage rates and prices. First, as explained above with reference to claim 1, Lebda teaches a system in which borrowers and lenders communicate directly, and hence does not contemplate a broker. Second, as explained above with reference to

claim 4, the "filtering criteria" of Lebda occurs on a remote computer 100. Even assuming for the sake of argument that "including rates and prices as part of the filtering criteria is old and well known in the art," as Examiner has asserted, Lebda teaches that this process occurs on remote computer 100, and nowhere teaches or suggests that the criteria are displayed to the borrower. Hence, Lebda does not teach or suggest "displaying" rates and prices to a broker.

Claim 6 is patentably distinct over Lebda. Nowhere does Lebda teach or suggest a "broker." In fact, Lebda teaches away from the use of a broker by having a system in which borrowers communicate directly with lenders.

In light of the above comments, Applicants respectfully request that the rejection of claims 1 through 6 be withdrawn and that the application be passed to issuance. Examiner is invited to contact the undersigned with any questions.

Respectfully submitted,



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